

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAMONT CROSSLEY,

Plaintiff,

v.

DR. ARYA,

Defendant.

No. 2:23-cv-3045 DJC CSK P

ORDER

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

1 In the pending motion, plaintiff alleges that his handwriting hand is broken as a result of  
2 an assault occurring on May 11, 2024. (ECF No. 19 at 2.) Plaintiff alleges that he will have  
3 surgery on his hand which may impact his ability to litigate this action for approximately three  
4 months. (Id.) This Court is sympathetic to plaintiff's hand injury. However, at this time, this  
5 Court does not find that plaintiff's hand injury warrants appointment of counsel. No scheduling  
6 order has been issued in this action. If plaintiff is unable to prosecute this action due to his hand  
7 injury, he shall notify the Court.

8 Having considered the factors under Palmer, this Court finds that plaintiff failed to meet  
9 his burden of demonstrating exceptional circumstances warranting the appointment of counsel at  
10 this time.

11 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of  
12 counsel (ECF No. 19) is denied without prejudice.

13 Dated: May 29, 2024

14   
15 CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

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